IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Bhanwar Lal. Versus State of Rajasthan.

S.B. Criminal Revision No. 285/1992 against the judgment dated 13-11-1992 passed by the Additional Sessions Judge No.3, Jodhpur, Camp Phalodi, in Criminal Appeal No.35/1992.

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Date of Order: April 27, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. P.N. Mohanani, for the petitioner.
Mr. JPS Chaudhary, Public Prosecutor for the State.

BY THE COURT:

The petitioner was convicted for the offence under Section 9 of the Opium Act by the judgment and order dated 30.1.1986 passed by the Judicial Magistrate, Phalodi (for short, "the trial Court" hereinafter) in Criminal Original Case No.197/1980 and sentenced to undergo six months rigorous imprisonment and a fine of Rs.300/-, in default of payment of fine further to undergo one month's simple imprisonment. The judgment and order dated 39-1-1986 of the trial Court was challenged by the petitioner before the Additional Sessions Judge No.3, Jodhpur, Camp Phalodi (for short, "the Appellate Court"

hereinafter) in Criminal Appeal No.35/1992. By the judgment and order impugned dated 13-11-1992, the appeal filed by the appellant was dismissed and the conviction and sentence awarded by the trial Court were affirmed. Aggrieved by his conviction and sentence, the petitioner has filed the instant criminal revision.

I have heard learned counsel for the petitioner and the Public Prosecutor appearing for the State. Perused the judgments and orders of the trial Court as well as of the Appellate Court and also gone through the record of the trial Court.

At the very out set, learned counsel for the petitioner submits that the petitioner does not want to challenge the conviction for the offence under Section 9 of the Opium Act, however, learned counsel for the petitioner has confined his arguments and challenge only to the quantum of sentence and submits that the Opium Act has been repealed and the matter is of 1980; the petitioner was arrested on 24-4-1980 i.e. almost twenty-six years ago and has already undergone the imprisonment for more than two months and, therefore, the substantive sentence awarded to the petitioner may be reduced to the period of imprisonment already undergone by him.

Learned Public Prosecutor submits that the sentence awarded by the trial Court and affirmed by the Appellate Court

cannot be said to be excessive.

I have given my thoughtful consideration to the rival submissions made by the learned counsel for the parties.

From the record, it is evident that vide EX.P/4, the petitioner was arrested on 24-4-1980. During trial, he remained in custody for a number of days and thereafter, after the judgment of the Appellate Court dated 13-11-1992, the petitioner remained in custody upto 11-1-1992, i.e. almost for two months. The occurrence, as noticed above, is of about twenty-six years ago. The petitioner suffered the imprisonment, as noticed above, and also faced the protracted trial and thereafter appeal and revision. The Opium Act has since been repealed and according to the learned counsel for the petitioner, the petitioner is, now, about 60 years of age, therefore, it would not be expedient at this juncture to send the petitioner back to the jail. Keeping in view the peculiar facts and circumstances of the case, in my view, the ends of justice would be met if the substantive sentence of imprisonment awarded to the petitioner is reduced to the period of imprisonment already undergone by the petitioner.

Consequently, the revision petition is partly allowed. While maintaining the conviction of the petitioner for the offence under Section 9 of the Opium Act, the substantive sentence of imprisonment awarded by the Courts below is reduced to the

period of imprisonment already undergone by the petitioner. The petitioner is on bail. The bail bonds are discharged.

(H.R. PANWAR), J.

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